UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AQUA CLUB, INC. and V.I.P. COUNTRY CLUB, L.L.C., Plaintiffs, vs. NEW YORK PROPERTY ACQUISITION, LLC and MATA AMRITANANDAMAYI CENTER, Defendants.	Civ. Action No. ECF Case DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiffs, The Aqua Club, Inc. and V.I.P. Country Club, L.L.C. (collectively, "Plaintiffs"), by and through their attorneys, Bartels & Feureisen, LLP, make their Complaint against defendants New York Property Acquisition, LLC and Mata Amritanandamayi Center (collectively, "Defendants") and allege as follows:

PRELIMINARY STATEMENT

1. This is an action for breach of contract arising out of the Defendants deliberate misrepresentations and failure to fulfill the obligations under a certain Asset Purchase Agreement with Plaintiffs.

2. As a result of Defendants' material breaches, Plaintiffs are entitled to terminate the contract and receive the full amount of the contract deposit, totaling two million dollars ($2,000,000.00), as liquidated damages pursuant to the express terms of the applicable contract.

3. In addition to liquidated damages, the Plaintiffs are entitled to the legal fees, costs and expenses incurred in this action pursuant to the express terms of the applicable contract.

THE PARTIES

4. Plaintiff The Aqua Club, Inc. ("Aqua Club") is a New York business corporation with a principal place of business in New Rochelle, New York.

5. Aqua Club is the owner in fee of certain parcels of real property situate in the City of New Rochelle, County of Westchester, State of New York located at 600 Davenport Avenue, New Rochelle, New York and 572 Davenport Avenue, New Rochelle, New York (collectively, the "Premises").

6. Plaintiff V.I.P. Country Club, L.L.C. ("VIP") is a New York limited liability company with a principal place of business in New Rochelle, New York.

7. VIP, together with Aqua Club, owns and operates a country club, beach club, swim club, private pool, restaurant, catering business, event venue and wedding reception venue under the trade name "VIP Country Club" (collectively, the "Business").

8. Defendant New York Property Acquisition, LLC is a Pennsylvania limited liability company with a principal place of business in Pittsburgh, Pennsylvania.

9. The Managing Member of Defendant New York Property Acquisition, LLC is Richard B. Sandow, Esq.

10. Richard B. Sandow, Esq., through his law firm, Jones, Gregg, Creehan & Gerace LLP, also serves as counsel for Defendants in connection with the applicable contract between the parties.

11. Defendant Mata Amritanandamayi Center ("MA Center") is a California nonprofit corporation with a principal place of business in Castro Valley, California.

JURISDICTION AND VENUE

12. Jurisdiction is founded upon diversity of citizenship under 28 U.S.C. § 1332(a)

because the parties are citizens of different states and the amount in controversy exceeds the sum of $75,000.00, exclusive of interest and costs.

13. This Court has personal jurisdiction over Defendants pursuant to New York CPLR 301.

14. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this judicial district, and because the parties agreed to venue in this district pursuant to the terms of the applicable contract.

FACTUAL BACKGROUND

15. On or about October 17, 2016, Plaintiffs entered into an Asset Purchase Agreement with Defendant New York Property Acquisition, LLC (the "Agreement").

16. Pursuant to the terms of the Agreement, Plaintiffs, as Seller, agreed to sell and Defendant New York Property Acquisition, LLC, as Buyer, agreed to purchase the Premises and substantially all of the assets used by Plaintiffs in the Business for a combined purchase price of twenty million dollars ($20,000,000.00).

17. Pursuant to Paragraph 5 of the Agreement, Defendant New York Property Acquisition, LLC, as Buyer, paid two million dollars ($2,000,000.00) as a deposit (the "Deposit").

18. To date, the Deposit remains in a special account maintained jointly by counsel for Plaintiffs and New York counsel for Buyer, as required under Paragraph 5 of the Agreement.

19. Pursuant to Paragraph 25 of the Agreement, the parties specifically acknowledged and agreed that in the event of Buyer's default, Plaintiffs shall be entitled to receive the full Deposit as liquidated damages.

20. Paragraph 25 further expressly entitles Plaintiffs to the legal fees, costs and expenses incurred as a result of this action.

21. Pursuant to Paragraph 27 of the Agreement, the parties expressly represented and warranted to each other that they had not "dealt" with any real estate broker, or other intermediary, in connection with the Agreement or the transactions contemplated under the Agreement.

22. Relying on Buyer's representation of Buyer's identity as New York Property Acquisition, LLC, a Pennsylvania limited liability company, and other representations of Richard B. Sandow, Esq. as to the identity of the Buyer, Plaintiffs warranted, under Paragraph 27 of the Agreement, that they had not "dealt" with any real estate broker in connection with this transaction.

23. On or about July 14, 2015, over a year prior to entering into an Agreement with Defendant New York Property Acquisition, LLC, Plaintiffs entered into a Commission Agreement with Regency Homes Realty Group, Inc. ("Regency") in connection with a potential sale of the Premises and the Business to Regency's client, Defendant MA Center.

24. In or about August 18, 2015, Defendant MA Center executed a Letter of Intent with Plaintiffs acknowledging that Regency would be paid a commission as joint broker for Plaintiffs and Defendant MA Center in connection with a prospective sale of the Premises and the Business to Defendant MA Center.

25. Due to overly aggressive and offensive tactics engaged in by Defendant MA Center, negotiations broke down and Plaintiffs informed Defendant MA Center that Plaintiffs would not enter into any transaction with Defendant MA Center.

26. Plaintiffs then informed Regency that due to the difficulties Plaintiffs experienced

with Defendant MA Center as a prospective purchaser, Plaintiffs would not enter into a transaction with Defendant MA Center.

27. Upon information and belief, the officers of Defendant MA Center were aware that Plaintiff did not want to enter into a transaction with them for the sale of the Premises and the Business after negotiations broke down in 2015.

28. In or about July 2016, Plaintiffs began negotiating with Defendant New York Property Acquisition, LLC, and duly executed the Agreement for the sale of the Premises and the Business for twenty million dollars ($20,000,000.00) on or about October 17, 2016.

29. At the time they duly executed the Agreement, the parties acknowledged that Defendant New York Property Acquisition, LLC would assign its rights, title, interest, duties and obligations under the Agreement to a new entity once it had organized its funding for the transaction.

30. On or about January 27, 2017, Plaintiffs received, for the first time, a copy of Defendants' Assignment and Assumption Agreement, purportedly dated January 18, 2017, wherein Defendant New York Property Acquisition, LLC assigned its rights, title, interest, duties and obligations under the Agreement to Defendant MA Center and Westchester Shores Event Holdings, Inc., a New York business corporation.

31. Upon information and belief, Defendant MA Center and Ron Gottsegen, president of Defendant MA Center, were the source of funds for the purchase of the Premises and the Business, and had control over all substantial decisions concerning the transaction.

32. Upon information and belief, Westchester Shores Event Holdings, Inc. was set up by Defendants as the operational entity, which at all times would be under the control of Defendant MA Center.

33. At the time of negotiating the terms of the transaction, upon duly executing Agreement, and at all times thereafter, Defendants were aware that Defendant MA Center was to be the beneficial owner of the Premises and the Business, and purposefully concealed this information from Plaintiffs.

34. Having previously declined to continue negotiating for the sale of the Premises and the Business with Defendant MA Center, Plaintiffs would have never knowingly entered into the Agreement had Defendants' disclosed the Buyer's true identity.

35. Defendants misrepresented that they had not "dealt" with any real estate broker in connection with the transactions contemplated in the Agreement because Defendant MA Center was aware that Plaintiffs would not enter into a purchase agreement with Defendant MA Center due to the negotiations which broke down in 2015.

36. Defendants' blatant misrepresentation, made at the time the Agreement was executed, is a material breach of Paragraph 27 of the Agreement and cannot be cured.

37. Pursuant to Paragraph 19(vii) of the Agreement, Buyer agreed not to disclose Plaintiffs' confidential information, as defined in the Agreement, to a third party without the prior consent of Plaintiffs.

38. Plaintiffs never provided written consent for the disclosure of Plaintiff's confidential information to Defendant MA Center.

39. Plaintiffs did not authorize the disclosure of Plaintiffs' confidential information to any entity other than Defendant New York Property Acquisition, LLC or its assignee.

40. Defendants did not assign the Agreement to Defendant MA Center until on or about January 18, 2017, and Plaintiffs did not receive notice of this assignment until on or about January 27, 2017.

41. Defendants were not authorized to disclose Plaintiff's confidential information to Defendant MA Center at the time the disclosure was made.

42. Had Plaintiffs known that Defendant MA Center was the true Buyer, Plaintiffs would not have consented to the release of Plaintiff's confidential information.

43. Defendants' unauthorized disclosure of Plaintiff's confidential information to Defendant MA Center is a breach of Paragraph 19(vii) of the Agreement and cannot be cured.

44. Pursuant to Paragraph 29 of the Agreement, the parties specifically acknowledged and agreed that the closing date under the Agreement is "time of the essence".

45. Plaintiffs and Buyer have subsequently entered into four (4) amendments to the Agreement.

46. In the most recent amendment of December 30, 2016 (the "Fourth Amendment"), the parties expressly acknowledged and agreed that the closing shall take place on January 30, 2017.

47. The Fourth Amendment, did not, in any way, extinguish the "time of the essence" requirement under the Agreement.

48. Based upon the "time of the essence" closing date, Plaintiffs continued to expend time, effort and money in order to fulfill their obligations in anticipation of the January 30, 2017 closing.

49. On or about January 20, 2017, counsel for Plaintiffs received a letter from Richard B, Sandow, Esq., the Pennsylvania counsel for and Managing Member of Buyer, stating that Buyer wished to extend the "time of the essence" closing date until March 1, 2017.

50. At the time of Buyer's letter, Plaintiffs had fulfilled all of their obligations under the Agreement and any amendments thereto.

51. Pursuant to the default and notice provisions of the Agreement, Plaintiffs, through counsel, served a notice of default letter ("Notice of Default") on Defendants on or about January 27, 2017.

52. The Notice of Default advised Defendants of their default as to (i) their failure to disclose that Buyer had "dealt" with a broker; (ii) the "time of the essence" closing date; (iii) their blatant misrepresentation of the true identity of the Buyer; and (iv) their unauthorized disclosure of Plaintiff's confidential information.

53. The Notice of Default further provided Defendants with a good faith opportunity to proceed to closing at a later date if Defendants agreed to compensate Plaintiffs for the operating costs of the Premises and the Business during the period of time between the January 30, 2017 "time of the essence" closing and Defendants' projected closing date of March 1, 2017, and accept other reasonable conditions.

54. Defendants have refused to pay Plaintiffs' operating costs and to otherwise accept Plaintiffs good faith proposal to proceed to closing despite Defendants' breaches.

COUNT I
(Breach of Contract)

55. Plaintiffs hereby incorporate by reference the allegations contained in all of the preceding paragraphs as if set forth fully herein.

56. Plaintiffs and Defendants are parties to the Agreement, a valid and enforceable contract for the purchase and sale of the Premises and the Business.

57. Plaintiffs have complied with all of their obligations under the Agreement.

58. Plaintiffs have at all times been ready, willing and able to effectuate the sale of the Premises and the Business in accordance with the terms of the Agreement.

59. By, *inter alia*, willfully failing to disclose that Defendant MA Center was the true identity of the Buyer named in the Agreement, and deliberately misrepresenting that they had not "dealt" with any real estate broker in connection with the transactions contemplated in the Agreement, and the other related breaches of the Agreement as set forth above, Defendants are in default of the express terms of the Agreement.

60. Based upon Defendants' default and incurable breach of the Agreement, Plaintiffs are entitled to the sum of two million dollars ($2,000,000.00) as liquidated damages pursuant to Paragraphs 25(i) of the Agreement, together with costs, expenses and legal fees, pursuant to Paragraph 25(iii) of the Agreement.

COUNT II
(Declaratory Judgment)

61. Plaintiffs hereby incorporate by reference the allegations contained in all of the preceding paragraphs as if set forth fully herein.

62. Plaintiffs have complied with all of their obligations under the Agreement, and have at all times been ready, willing and able to effectuate the sale of the Premises and the Business in accordance with the terms of the Agreement.

63. Defendants have breached the express terms of the Agreement by, *inter alia*, willfully failing to disclose that Defendant MA Center was the true identity of the Buyer named in the Agreement, and deliberately misrepresenting that they had not "dealt" with any real estate broker in connection with the transactions contemplated in the Agreement, and committing other related breaches of the Agreement as set forth above.

64. Upon learning of Defendants' breach of the Agreement, Plaintiffs provided Defendants with a Notice of Default, which sought return of the Deposit, pursuant to the terms of the Agreement, if Defendants did not agree to compensate Plaintiffs for the operating costs of the

Premises and the Business during the period of time between the January 30, 2017 “time of the essence” closing and Defendants’ projected closing date of March 1, 2017, and accept other reasonable conditions.

65. Defendants have refused to accept Plaintiffs proposed terms in lieu of terminating the Agreement as a result of Defendants’ breach, and have failed to acknowledge Plaintiffs’ right to the Deposit as liquidated damages pursuant to the express terms of the Agreement.

66. To date, the Deposit remains in a special account maintained jointly by counsel for Plaintiffs and New York counsel for Buyer, as required under Paragraph 5 of the Agreement.

67. Without the consent of Defendants’ New York counsel, as co-closing agent, the Deposit cannot be released to Plaintiffs from the jointly maintained account.

68. Plaintiffs, therefore, seek a judgment declaring their right to the Deposit as a result of Defendants’ breach of the Agreement, and directing New York counsel for Buyer, as co-closing agent with counsel for Plaintiffs, to release the entire Deposit to Plaintiffs.

WHEREFORE, Plaintiffs The Aqua Club, Inc. and V.I.P. Country Club, L.L.C. demand judgment against Defendants New York Property Acquisition, LLC and Mata Amritanandamayi Center jointly and severally, as follows:

1. For liquidated damages in the sum of $2,000,000.00;
2. An award of costs, expenses and legal fees incurred in this action;
3. A declaration of Plaintiffs’ right to the Deposit;
4. An order for release of the Deposit to Plaintiffs; and
5. For statutory interest and such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
February 17, 2017

BARTELS & FEUREISEN, LLP

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